1944. File No. Boroughs II 744

Legal Department.

B BRANCH

Subject:— Rules and Notifications under the Bombay Municipal Boroughs Act, 1925—

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Office of the R. L. A.

The view taken at "A" in paragraph 2 of G.D. office note at page 37 is correct.

2. A revised draft Order is sent herewith.

3. The person, who is to exercise the powers and perform the duties of the superseded Municipality is to be appointed by the Commissioner under section 219(2)(b) of the Bombay Municipal Boroughs Act, 1925. The last sub-paragraph of paragraph 1 of the draft Order at page 39 is therefore deleted from the revised draft Order.

Id/-

P.N.M.

27/4/44.

Remembrancer of Legal Affairs.

U.R. to G.D.,No.181-Confl,dated the 27th April 1944.

R.D.P.
12/7/56

S.C.

Ahmedabad Municipality.

Supersession of -.

GOVERNMENT OF BOMBAY.
General Department.

Bombay Castle, April 1944.

O R D E R .

No. 1825. - Whereas by Government Order in the General Department, No. 1825, dated the 21st August 1942, the Government of Bombay, in exercise of the powers conferred by sub-rule (1) of rule 38B of the Defence of India Rulesxd directed that the Ahmedabad Borough Municipality (hereinafter referred to as the Municipality) shall be superseded with effect from the 22nd August 1942, for a period of six months;

And whereas the period of supersession of the Municipality was extended from time to time up to the 31st March 1944;

And whereas by Government Notification in the General Department, No.1825, dated the 22nd October 1943, the Government of Bombay, in exercise of the powers conferred by clause (b) of sub-rule (3) of rule 38B of the said Rules, read with the proviso to the said sub-rule (3), directed that the Municipality shall be reconstituted, with effect from the 1st April 1944, in the manner provided for its constitution under the Bombay Municipal Boroughs Act, 1925 (Bom XVIII of 1925);

And whereas the Municipality was accordingly reconstituted with effect from the 1st day of April 1944;

And whereas the newly reconstituted Municipality has, by its Resolution dated the 13th April 1944, resolved that the Municipality, inclusive of its President, shall cease to function forthwith;

And whereas in the opinion of the Government of Bombay, the said Municipality is not competent to perform the duties imposed on it by or under the said Act or otherwise by law;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 219 of the said Act the Government of Bombay is pleased to declare the Municipality to be incompetent to perform the duties imposed upon it by and under the said Act, and otherwise by law and to direct that it shall be superseded for a period of three years commencing from the date of this Order.

2. The Commissioner, Northern Division, should be requested to take steps under section 219(2)(b) of thesaid Act to appoint a person or persons to exercise the powers and perform the duties of the superseded Municipality.

3. This Order should be published in the Bombay Government Gazette.

By order of the Governor of Bombay

Secretary to Government.

R.D.P.
12/7/56

S.C.

Office of the R.L.A.

Although the view taken by Assistant Secretary, G.D. para.1 of his note dated 25-9-1944 at p.7 is correct and it is competent to the Commissioner under section 219(2)(b) of the Bombay Municipal Boroughs Act, 1925, to appoint different persons from time to time, the use of the words "until further orders" in his order at p.3 was not happy, since it was not intended to make any change in the committee of management. Moreover, any change called for could have been made at any time without the use of those words. It may be pointed out to the Committee that is not intended to provide merely a stop gap arrangement.

Id/-

P.N.M.

6/10/44.

Remembrancer of Legal Affairs.

U.R. To G.D.,No.6983,dated the 9th October 1944.

R.D.P.
12/7/56

5.C.

Office of the R.L.A.

The existing rule (vide p.17 ante) reads thus:- "The rates of tax of the shops x for sale of tobacco and its preparations shall be levied as under:-

Articles	Rates. Rs.
Tobacco	12
Betel leves	8
Cigars and bidis	3
Snuff	5

These rates are payable on 1st April each year. A vendor of tobacco may also sell cigars or bidis without payment of the additional tax at the rate fixed therefor".

The Municipality now proposes to add the following th existing rule mentioned above:-

"Before starting of a new shop for, or resorting to, the sale of any or all of the commodities specified above, the vendor shall pay the requisite amount of tax to the Municipality and in case of default he shall pay at double the rate of the tax so prescribed."

The question for R.L.A's consideration is whether a rule in so far as it provides for a penalty for non-payment of the tax in time is ultra vires clause (j) of section 58 of the Bombay Municipal Boroughs Act, 1925.

The shop-tax for the sale of tobacco etc. is being levied by the Municipality under clause (XIV) of section 73(1) of the Bombay Municipal Boroughs Act, 1925, in pursuance of the rules framed in that behalf under clause (j) of section 58. While interpreting analogous provisions of clause (i) of section 46 of the Bombay District Municipal Act, 1901 the R.L.A. observed thus -

"There does not appear to be any provision in the Act by which a Municipality can levy a penalty on a defaulter for not paying up the tax due from him in time. Section 46(1) only provides for the recovery of fees for notices of demand and for execution of distress warrants but it

would not cover the levy of a penalty as proposed by the Chairman of the Committee of Management, Surat". (see R.L.A.'s opinion No.3024,dated 23-12-1924). In the subsequent opinion No.209,dated 13-1-1936, it was inter alia held that "Clause (j) of section 58 empowers a Municipality to make rules not inconsistent with the Act, as regards the mode of the levy, recovery,payment etc. of tax. But there is nothing in this clause which gives power to a municipality to levy a penalty or to close the privy if the tax is not paid etc." In another case which came up for the consideration of R.L.A., the Kurla Municipality framed rules for the levy of a tax by way of a license fee on dogs, providing that if the owner of the dog did not obtain a license for keeping the dog, he should pay double the tax for the year. The provision of such a penalty was held to be objectionable and it was remarked: "A penalty for non-payment of tax cannot, however, be prescribed by any rule under section 58(j) read with section 75(a)" (See para. 2 of R.L.A's opinion No.2303,dated 28-4-1937). The above view also finds support in the decision in Emperor v. Vishnu Shanker (39 Bom. L.R. p.89). The answer therefore is in the affirmative.

Id/-

P.N.M.

30/11/44.

Remembrancer of Legal Affairs.

U.R. to G.D.,No.8453,dated the 1st December 1944.

R.D.P.
12/7/56

S.C.